IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1158 OF 2000

Anant Mahadev Gaitonde ...Petitioner

Versus

R.G. Shirahatti, Dean,
Seth G.S. Medical College, & Ors. ...
Respondents

Mr. M.K. Nesari for the Petitioner

Mrs. P.A. Purandare for the Bombay Municipal Corporation.

CORAM: DALVEER BHANDARI, C.J., &
S.J. VAZIFDAR, J.
DATE : JULY 11, 2005.

P.C.

1. The petitioner, who was a Lecturer in Microbiology in Seth G.S. Medical College, Parel, Bombay, has filed this petition with a prayer that the respondents be directed to appoint the petitioner to the post of Reader (Associate Professor) with immediate effect as there were vacancies in all the three colleges of respondents, viz., Seth G.S.

Medical College, Parel, Lokmanya Tilak Memorial Medical College, Sion, and Topiwala National Medical College, Bombay Central, Mumbai.

2. The petitioner has also prayed that the Rules in the accompaniment to the Government Resolution passed by the Maharashtra State Government on 3rd January, 1980 are null and void and *ultra vires*. The petitioner has also prayed for declaring the Rules framed by the Medical Council of India in 1970, debarring qualified persons from any faculty other than medical faculty to be eligible for holding the post of Head of Department of Microbiology, as null and void.

3. The brief facts which are necessary to dispose of the petition are recapitulated as under:-

4. The petitioner was appointed as a Tutor in the Department of Microbiology on 16th January, 1979. The petitioner was promoted to the post of Lecturer in the same department on 16th January, 1982. By an office

order dated 28th June, 1984, the petitioner was transferred to the Molecular Biology Department as a working arrangement in the leave vacancy of Dr. S.P. Naik, Reader, with effect from 26th June, 1984 till further orders.

5. The petitioner tried to build up the case that since the working arrangement was made, by which he worked in the leave vacancy of Dr. S.P. Naik, Reader, with effect from 26th June, 1984 till his retirement, therefore, he is entitled to the pay and emoluments of a Reader from 26th June, 1984 till his retirement. This plea of the petitioner is totally devoid of any merit. Just because he worked in the leave vacancy of a Reader, he automatically cannot be entitled to get pay and emoluments of a Reader.

6. The petitioner also submits that now Dr. Naik has retired, therefore he should be promoted as Reader in his place. The petitioner further prays that he is entitled to get salary and emoluments of a Reader from 26th June, 1984.

7. Pursuant to the notice issued by this Court, reply-affidavit has been filed on behalf of the Bombay Municipal Corporation, Bombay. A preliminary objection was taken that there has been an inordinate delay on the part of the petitioner in approaching the Court and on the ground of laches alone, this petition deserves to be dismissed.

8. It is also mentioned in the reply-affidavit that the case of the petitioner for promotion to the post of Associate Professor (Reader) was considered by the Promotion Committee in the meeting held on 7th March, 1986, as per the then existing Medical Council of India Rules, 1970. The Promotion Committee, after examining the entire confidential record of the petitioner, did not find him fit for promotion to the post of Associate Professor. In the said meeting, they selected two other lecturers, who were junior to the petitioner, for the post of Associate Professor (Reader). It may be pertinent to mention that the petitioner had never challenged the

order of the Promotion Committee dated 7th March, 1986. This petition was filed on 8th March, 2000.

9. It may be mentioned that the Government of Maharashtra, by its Resolution dated 3rd January, 1989, has accorded sanction to the Rules for recruitment for teaching posts in the Medical Colleges of these respondents. According to the Rules, the minimum qualification for appointment or promotion as Associate Professor is Ph.D. Admittedly, the petitioner had never acquired Ph.D. Degree. Therefore, subsequently, when the vacancy arose in 1990, the petitioner could not be considered for promotion because he did not fulfil the basic qualification for appointment as Associate Professor (Reader). The clear stand of the respondents has been that the petitioner was never promoted to the post of Associate Professor (Reader) and he retired as a Lecturer. Therefore, there is no question of giving any financial benefit of the post of Reader. Admittedly, all the dues of the petitioner have been paid as Lecturer till date.

10. This petition, being devoid of any merit, is accordingly dismissed. The Rule is discharged.

CHIEF JUSTICE

S.J. VAZIFDAR, J.